

## **General Tobacco**

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### **TELECOPIER TRANSMITTAL PAGE**

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DATE: August 19, 2004  
TO: Michael Hering  
FAX NO.: (202) 349-1935  
RE: MSA Application  
FROM: J. Ronald Denman

NUMBER OF PAGES IN THIS TRANSACTION, INCLUDING THIS TRANSMITTAL PAGE: 16

If not received properly, please contact: Miriam

Dear Michael,

Attached is the final execution of the Adherence Agreement.

Ron

### **General Tobacco Adherence Agreement**

This Agreement is entered into by and between Vibo Corporation d/b/a General Tobacco ("General Tobacco"), its Affiliate Trademark Holding Corporation, its Affiliate Sun Tobacco, Inc. and the undersigned Settling States under the Master Settlement Agreement ("Settling States"); and

WHEREAS, General Tobacco, and its Affiliate, Sun Tobacco, Inc. ("Sun"), have imported Cigarettes into the United States and sold them under the brand names "GT One," "Bronco," "Silver," and "Cowboy" since 2000, and General Tobacco intends to import and sell the brand "Champion" (together "the General Tobacco Brands"); and

WHEREAS, the trademarks for such brands are owned by Trademark Holdings Corporation ("Trademark Holdings"), an Affiliate of General Tobacco; and

WHEREAS, the Cigarettes imported and sold by General Tobacco and Sun were manufactured by Productora Tabacalera De Colombia S.A. ("Protabaco"), Cia. Colombiana de Tabaco, S.A., Cibahia Tabacos Especiales Ltda., and Cigarettes Industry TH D Georgiades S.A.; and

WHEREAS, General Tobacco and Sun have imported and sold the following number of Cigarettes in the United States (as measured by Cigarettes entered for consumption with federal excise tax collected): January 1, 2000 through December 31, 2000, 58,780,000 Cigarettes; January 1, 2001 through December 31, 2001, 975,048,000 Cigarettes; January 1, 2002 through December 31, 2002, 3,779,172,000 Cigarettes; and January 1, 2003 through December 31, 2003, 7,681,500,000 Cigarettes; and

WHEREAS, Protabaco manufactured and exported the following number of Cigarettes to the United States under the brand name "Carlyle" (as measured by Cigarettes entered for consumption with federal excise tax collected), in addition to those imported to the United States by General Tobacco and Sun: January 1, 2001 through December 31, 2001, 69,480,000 Cigarettes; January 1, 2002 through December 31, 2002, 42,156,000 Cigarettes; and

WHEREAS, General Tobacco and Sun have deposited into an NPM Qualified Escrow Fund with SunTrust Bank, located at 777 Brickell Avenue, Miami, Florida, 33133, the following amounts for sales of the General Tobacco Brands:

- 2000 - \$43,700.37 for Protabaco; \$21,894.60 for General Tobacco;
- 2001 - \$3,741,853.35 for Protabaco; \$324,137.23 for Sun;
- 2002 - \$16,988,327.52 for Protabaco; \$1,872,384.57 for Sun;
- 2003 - \$49,663,572.19 for Protabaco; \$4,821,472.88 for Sun;
- 2004 - \$78,069.42 for Protabaco;

and Protabaco has deposited into an NPM Qualified Escrow Fund with Wachovia Bank, located at 200 South Biscayne Blvd., 14th floor, Miami, FL 33131 the following amounts for sales of "Carlyle:"

- 2001 - \$232,411.66
- 2002 - \$539,564.75

(together, "the Escrowed Funds"), which amounts were deposited in satisfaction of the escrow statutes of Settling States ("NPM Escrow Statutes") in which such Cigarettes were sold; and

WHEREAS, the Escrowed Funds represent the full amount required to be kept in escrow for all Cigarettes imported by General Tobacco and all other Cigarettes manufactured by Protabaco and imported into the United States by others under the NPM Escrow Statutes for sales of Cigarettes in the years 2000-2003; and

WHEREAS, General Tobacco and Protabaco have each satisfied all claims for penalties for allegedly failing to make timely or adequate deposits under the NPM Escrow Statutes; and

WHEREAS, General Tobacco has entered into an exclusive manufacturing and distribution agreement ("Exclusive Manufacturing and Distribution Agreement") with Protabaco, attached hereto as Exhibit A, for the United States market, including Puerto Rico, the District of Columbia, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa and Guam, and each Settling State is a third party beneficiary of certain portions of the Exclusive Manufacturing and Distribution Agreement as specified therein; and

WHEREAS, General Tobacco wishes to become a Subsequent Participating Manufacturer under the Master Settlement Agreement with respect to all brands owned or licensed by it or any of its Affiliates and also as the exclusive importer in the United States of all cigarettes manufactured by Protabaco, and filed its application therefor; and

WHEREAS, Sun and Trademark Holdings will benefit from the entry of General Tobacco into the Master Settlement Agreement ("MSA"); and

WHEREAS, pursuant to the provisions of Section IX(i)(4) of the MSA, General Tobacco's, Sun's and Protabaco's 1997 and 1998 Market Share equals zero for purposes of Section IX(i) of the MSA, and the Settling States are on that basis willing to agree to the provisions of paragraph 13 of this Agreement without any reduction of such Market Shares;

NOW, THEREFORE, the Parties agree as follows:

(Unless otherwise indicated, all capitalized terms in this Agreement shall have the same meaning as in the MSA.)

1. **Effective Date.** The Effective Date of General Tobacco's membership in the MSA shall be July 1, 2004. The Entry Date shall be the date on which General Tobacco is listed as a Participating Manufacturer under the MSA on the NAAG website.

2. **Release and Payment of Escrowed Funds.**

a. On the Entry Date, the entire amount of the Escrowed Funds, which as of the Entry Date total \$78,327,388.54, whether deposited by General Tobacco, Sun Tobacco, or by Protabaco, shall be released for payment to the MSA Escrow Agent in accordance with instructions from the Independent Auditor to the Master Settlement Agreement.

b. General Tobacco, Sun Tobacco, Protabaco, and the Settling States shall provide all necessary directions to the escrow holder to effectuate such release.

c. By prior agreement, Protabaco has authorized the release of all Escrowed Funds held in its name to the Settling States upon General Tobacco's entry into the MSA.

d. General Tobacco warrants and represents that no encumbrance exists on the Escrowed Funds, which would affect General Tobacco's ability to cause all Escrowed Funds to be released to the Settling States upon its entry into the MSA.

3. **Report and Payment for 2004 Sales.**

a. General Tobacco will provide to the Independent Auditor to the Master Settlement Agreement ("the Independent Auditor") a true statement of the number of Protabaco Cigarettes and/or General Tobacco brands on which federal excise taxes were collected by the federal government, or arbitrios de cigarillos were collected by the Puerto Rico taxing authority from, respectively, January 1, 2004 through June 30, 2004, and from July 1, 2004 through December 31, 2004.

b. On April 15, 2005 General Tobacco will make full payment pursuant to Sections VI(c) and IX(c) of the MSA in accordance with instructions received from the Independent Auditor based on its Market Share (as that Market Share is defined in Paragraph 4) attributable to Cigarettes on which such taxes were collected from July 1, 2004 to and including December 31, 2004.

c. Payments attributable to Cigarettes on which such taxes were collected from January 1, 2004 through June 30, 2004 shall be made pursuant to Paragraph 10 hereof.

4. **Payment for post-2004 Sales.** General Tobacco will make full and timely payments under the MSA for all obligations arising from its Market Share of Cigarettes for all periods beginning after December 31, 2004. General Tobacco's Market Share shall include all Cigarettes for which it has, has assumed, or will assume responsibility for MSA payments under the MSA, Amendment No. 24 to the MSA, the Exclusive Manufacturing and Distribution Agreement and/or this Agreement.

5. **Amounts Due on Account of Cigarettes on which excise taxes were collected in 2000, 2001, 2002 and 2003.**

a. The Independent Auditor has calculated that the payments that would have been due from General Tobacco on March 31, 2001, March 31, 2002, and March 31, 2003 under Section VI(c) of the MSA and on April 15, 2001, April 15, 2002, April 15, 2003 and April 15,

2004 under Section IX(c) with respect to Cigarettes sold by General Tobacco, its affiliate, Sun, and Protabaco between January 1, 2000 and December 31, 2003 had General Tobacco been a Participating Manufacturer and been responsible for all the Cigarettes it sold as well as the "Carlyle" brand Cigarettes manufactured by Protabaco and sold by another company, which payments total \$232,398,055.87.

b. From the above figure, a settlement amount of \$5,602,825.42 has been deducted to account for the settlement of a potential dispute regarding application of the NPM adjustment, which was calculated as if General Tobacco were a similarly situated Subsequent Participating Manufacturers having applied the "1999 through 2002 NPM Settlement Amount" on the same terms on which the Settling States settled similar claims by other SPMs.

c. For the purposes of calculating interest, the 1999 through 2002 NPM Settlement Amount shall be credited against the payments due according to the following allocation:

- April 15, 2001 payment - \$707,476.17 credit.;
- April 15, 2002 payment - \$1,949,393.87 credit.
- April 15, 2003 payment - \$2,945,955.38 credit.

d. Having made the above credits and interest calculations on all due and owing payments through June 30, 2004, the Independent Auditor calculated a total net payment obligation ("Net Payment Obligation") of \$232,959,704.59 covering sales in 2000, 2001, 2002 and 2003.

e. The Net Payment Obligation shall be reduced by the amount of the Escrowed Funds to be released to the States, in accordance with paragraph 1 of this Agreement, after which, the net amount shall be designated for purposes of this Agreement as the "2000-2003 Prior Obligations."

f. For the purposes of the annual payments identified in paragraph 7 of this Agreement, the entire amount of the 2000-2003 Prior Obligations, including the interest accrued through June 30, 2004, shall be considered principal.

6. **Interest on Prior Obligations.** From July 1, 2004 forward, interest on any unpaid portion of the 2000-2003 Prior Obligations shall accrue at the fixed rate of 5% (prime in March 2004 plus one percent), and shall be calculated by the Independent Auditor in the

Independent Auditor's customary manner, and added to any unpaid portion of the 2000-2003 Prior Obligations.

7. **Amount Due on Account of Sales from January 1, 2004, through June 30, 2004.**

a. Upon compliance by General Tobacco of its 2004 importation history in accordance with paragraph 2 of this Agreement, the Independent Auditor shall calculate the MSA payments that would be due April 15, 2005, but for the terms of this Agreement, on the portion of General Tobacco's Market Share attributable to Federal Excise Taxes or aribtrios de cigarillos collected between January 1, 2004 and June 30, 2004.

b. The Independent Auditor's calculation pursuant to subsection 7(a) shall be added to the outstanding balance of the 2000-2003 Prior Obligations and the resulting sum shall be designated for purposes of this Agreement as the "General Tobacco Prior Obligations." Interest on this portion of the General Tobacco Prior Obligations shall also accrue, beginning on April 15, 2005, at the fixed rate of 5% in accordance with paragraph 5 of this Agreement.

c. For the purposes of the annual payments required by paragraph 7 of this Agreement, the entire amount of the General Tobacco Prior Obligations, with the exception of the interest accrued on the 2000-2003 Prior Obligations between July 1, 2004 and April 15, 2005, shall be considered to be principal.

8. **Annual Payments to Retire the General Tobacco Prior Obligations.** General Tobacco shall make annual payments of the General Tobacco Prior Obligations on August 30 of each year, beginning on August 30, 2005. Each annual payment will include all accrued interest on the General Tobacco Prior Obligations through and including the date of payment, plus the following percentage of the principal amount of the General Tobacco Prior Obligations:

- On or before August 30, 2005 1% of the principal
- On or before August 30, 2006 2% of the principal
- On or before August 30, 2007 3% of the principal
- On or before August 30, 2008 5% of the principal
- On or before August 30, 2009 7% of the principal
- On or before August 30, 2010 8% of the principal

- On or before August 30, 2011 9% of the principal
- On or before August 30, 2012 10% of the principal
- On or before August 30, 2013 12% of the principal
- On or before August 30, 2014 13% of the principal
- On or before August 30, 2015 14% of the principal
- On or before August 30, 2016 16% of the principal

Such payments shall be in addition to any payments otherwise due under the MSA with respect to Cigarettes on which Federal Excise Tax or arbitrios de cigarillos is collected after June 30, 2004.

9. **Prepayments of the General Tobacco Prior Obligations.** General Tobacco may, at its option, prepay the General Tobacco Prior Obligations without penalty, provided that General Tobacco may only make prepayments if there are no outstanding payments due under the MSA for any Cigarettes on which Federal Excise Tax was paid after June 30, 2004. Any prepayment of the General Tobacco Prior Obligation shall serve first to reduce the accrued interest from the date of the last payment, and then to reduce the next principal payment.

10. **Quarterly Payment of Escrow for Current Obligations**

a. The MSA payments attributable to General Tobacco's Market Share (as defined in paragraph 4 above) of all Cigarettes on which Federal Excise Tax or arbitrios de cigarillos (collectively "FET") is collected after June 30, 2004 are deemed to constitute General Tobacco's "Current Obligations."

b. General Tobacco shall make quarterly payments ("Quarterly Payment(s)") into escrow towards its Current Obligations based on a fixed amount per-cigarette. The per-cigarette amount shall be the aggregate base amounts in MSA Section IX(c)(1) and IX(c)(2) for payments to be made in the year following the year in which FET is collected, adjusted by the Inflation Adjustment (assuming a 3% increase from the Inflation Adjustment made to the payments made in the year in which FET is collected), and divided by the Base Volume. This quarterly payment obligation shall not modify or reduce the amount of, or General Tobacco's responsibility to pay in full, its Current Obligations as determined pursuant to the relevant



provisions of the MSA, Amendment No. 24 to the MSA, and/or the Exclusive Manufacturing and Distribution Agreement.

c. General Tobacco shall make the Quarterly Payments on the fifteenth day of the fourth month after the end of the calendar quarter in which a payment obligation accrues.

d. The first Quarterly Payment under this Agreement, made for Cigarettes on which FET was collected in July, August and September of 2004, will be due on January 15, 2005.

e. The second Quarterly Payment, for Cigarettes on which FET was paid in October, November and December of 2004, will be due on April 15, 2004, coinciding with the day on which MSA payments are due for Cigarettes sold in the previous calendar year. This Quarterly Payment shall be in the amount necessary to satisfy General Tobacco's Current Obligations for the period of July 1, 2004 through December 31, 2004, as calculated by the MSA Independent Auditor, less the Quarterly Payment made by General Tobacco for sales in the third quarter of 2004. All subsequent Quarterly Payments made on April 15 of any year for sales occurring in the fourth calendar quarter of the preceding year, shall be in the amount necessary to satisfy General Tobacco's Current Obligations for the preceding year, as calculated by the MSA Independent Auditor, less the Quarterly Payments made by General Tobacco for sales in the first three quarters of the preceding year.

f. The Quarterly Payments will be made to an escrow account held for the benefit of the Settling States by SunTrust Bank or another bank acceptable to both General Tobacco and the Settling States. The escrow agreement for this account will provide that the deposits are held for the benefit of the Settling States and are not part of General Tobacco's estate in the event of a bankruptcy and that the full amount of the principal and interest of such account will be paid to the MSA Escrow Agent on or before the Payment Dates specified in the Master Settlement Agreement.

g. General Tobacco will provide the States with an agreement granting the States a security interest in the principal placed in such escrow account, effective on the Entry Date, in the form attached as Exhibit B hereto.

h. General Tobacco will obtain the benefit of all interest accrued on such principal, which amounts shall remain in escrow and can, if transferred to the MSA Escrow

Agent for payment to the States, serve to reduce the MSA payments due on April 15 of the year in question.

i. General Tobacco's Quarterly Payments obligation will continue until the General Tobacco Prior Obligations has been paid in full.

j. The quarterly payments into escrow made in compliance with this Agreement shall not be deemed to have satisfied General Tobacco's payment obligations under the MSA until the monies held in the quarterly payment escrow account are duly transferred to the MSA Escrow Agent.

k. The failure of General Tobacco to make a quarterly payment in accordance with this Paragraph shall be deemed to a breach of its payment obligations under the MSA and shall give rise to any available remedy for the breach thereof.

11. **Sales Reporting.** General Tobacco will report all its sales of Cigarettes in the United States to Management Science Associates, Inc. in accordance with the Section II (ij) of the Master Settlement Agreement and will timely and accurately make all other reports required of it by the MSA or requested of it by the Independent Auditor. Subject to the limitations set forth in Section XI(d)(6) of the MSA, the figures reported by General Tobacco to the Independent Auditor for sales prior to January 1, 2004, may be changed only on the basis of newly discovered facts.

12. **Monitoring.** To enable the Settling States to monitor General Tobacco's compliance with this Agreement, General Tobacco shall provide the Tobacco Project of the National Association of Attorneys General ("NAAG"), subject to the confidentiality agreement with NAAG; copies of all monthly reports and excise tax returns filed by General Tobacco or any Affiliate with the Tobacco Tax Bureau of the United States Department of the Treasury or any predecessor or successor agency, and; copies of all import and export documents filed with the United State Customs and Border Protection Agency or any predecessor or successor agency, and, upon request Importer Trade Activity Reports ("ITRAC Reports") and copies of all invoices and bills of lading for Cigarettes sold by General Tobacco.

13. **Credit for Previously Settled State Fee .**

a. The parties recognize that Minnesota has established a fee on the sale of Cigarettes that is applicable to Cigarettes covered by this Agreement that are subject to Minnesota state excise tax and that similar fees may be enacted by Florida, Mississippi and Texas (which four States are referred to as the "Previously Settled States").

b. With respect to Cigarettes for which General Tobacco has a payment obligation under the MSA and which are also subject to such a fee imposed by one or more of the Previously Settled States, General Tobacco may elect to receive a credit against its Current Obligations arising from sales of Cigarettes during the year in question for any payments it actually made with respect to such sales on account of such a fee to the Previously Settled States, up to the amount of the payment that would be due for such Cigarettes under the MSA, provided that General Tobacco first agrees to increase its Current Obligations in the amounts described below

c. For Current Obligations attributable to sales made in the years 2004 – 2006, the increase shall be (i) 4.55% of the Current Obligations arising from all sales in the United States (as defined in Amendment No. 24 to the MSA) during the period in which the fee of any Previously Settled State is applicable times (ii) the fraction representing the ratio of the aggregate Shares of all Previously Settled States in which such assessment is applicable during the period in question to the aggregate Shares of all four Previously Settled States.

d. For Current Obligations attributable to sales made in the years following 2006, the increase shall be (i) 4.0444444% of the Current Obligations arising from all sales in the United States (as defined in Amendment No. 24 to the MSA) during the period in which the fee of any Previously Settled State is applicable times (ii) the fraction representing the ratio of the aggregate Shares of all Previously Settled States in which such assessment is applicable during the period in question to the aggregate Shares of all four Previously Settled States.

e. For purposes of this paragraph, the respective Shares of the four Previously Settled States shall be: (i) Mississippi – 1.7%; (ii) Florida – 5.5%; (iii) Texas – 7.25%; and (iv) Minnesota – 2.55%.

f. If General Tobacco elects to receive this credit, it must waive its claims to any NPM Adjustment applicable to payments for sales made in 2004 and also to waive its claims

for any NPM Adjustment applicable to payments for sales made in 2003 attributable to Cigarettes for which General Tobacco is assuming a payment obligation under this Agreement.

g. The credit under this section may not be elected for fewer than all Previously Settled States, however, if the Settling States reach agreement with other SPMs for a credit against fees paid to the Previously Settled States, General Tobacco may elect to have the terms of such agreement apply to it in lieu of the provisions of this Section.

h. In order to elect to receive this credit, General Tobacco must provide notice in writing to the Independent Auditor and the Settling States no later than January 15 of the year following the year in which the sales for which the credit is requested were made. Once General Tobacco elects to receive the credit, it shall receive the credit and make the increase in payments described above for all subsequent years and shall not have the option of electing otherwise.

14. **Security Agreement in General Tobacco Trademarks.**

a. General Tobacco will execute a security agreement ("Trademark Security Agreement") in the form attached as Exhibit C hereto effective on the Entry Date in all trademarks held by it or its Affiliate Trademark Holdings, or any other subsidiary or Affiliate.

b. The Trademark Security Agreement will secure the payments to be made to the States under the MSA for General Tobacco's Current Obligations and will expire two years from the Entry Date.

c. The Trademark Security Agreement will permit General Tobacco the ability to use its trademarks to secure loans for working capital, provided that none of the loans are used for shareholder distributions (except for payment of Subchapter S Corp. tax liabilities).

d. Should the States negotiate other arrangements with a majority of the OPMs designed to secure their payments or applicable to positions taken in any bankruptcy proceeding, General Tobacco agrees to accept those arrangements.

15. **Forbearance by the Settling States.** Each Settling State agrees that it will not initiate any action or proceeding against General Tobacco regarding the General Tobacco Prior Obligations so long as General Tobacco is in compliance with this Agreement.

16. **MFN Waiver.** General Tobacco agrees that the following agreements shall not trigger the most favored nation provision of Section XVIII(b)(4) of the MSA:

- The "Settlement Agreement Between Brown & Williamson and the Settling States with Respect to the NPM Adjustment and Star Tobacco Disputes," dated June 18, 2003,
- The "Settlement Agreement Between R.J. Reynolds Tobacco Company and the Settling States with Respect to Potential NPM Adjustments," dated June 18, 2003,
- The "Agreement of Philip Morris and the Settling States Concerning Settlements Entered into by the Settling States with Other Participating Manufacturers Concerning NPM Adjustment and Star Tobacco Disputes," dated June 18, 2003,
- The "Agreement of Lorillard Tobacco Company and the Settling States Concerning Settlements Entered into by the Settling States with Other Participating Manufacturers Concerning NPM Adjustment and Star Tobacco Disputes," dated June 18, 2003, and
- Other agreements that have been or may be entered into with other Subsequent Participating Manufacturers to resolve claims relating to potential NPM Adjustments for the sales years 1999, 2000, 2001, and 2002,

provided that the amount of the NPM Adjustment permitted to any such Subsequent Participating Manufacturer does not exceed 100% of the potential NPM Adjustment calculated by the Independent Auditor with respect to such Subsequent Participating Manufacturer's payments.

17. **Limited MFN Rights.**

a. If the Settling States execute any agreement under which a Non-Participating Manufacturer ("NPM") with prior unpaid obligations that are not fully paid at the time of execution becomes a Participating Manufacturer and such agreement contains a provision relating to i) quarterly payments of such company's MSA payment obligations arising from sales made after entry into the MSA or; ii) the payment of principal of MSA payment obligations arising from sales made prior to entry into the MSA ("Prior Obligations") or; iii) interest on Prior Obligations that is on overall terms more favorable on a relative basis to such Manufacturer than the corresponding provision of this Adherence Agreement, General Tobacco shall be entitled to

substitute the provision or provisions of such agreement (the "Reference Agreement") for the corresponding provision of this Adherence Agreement;

b. If General Tobacco exercises the right granted by the preceding subsection, the Settling States shall have the right to substitute in this Adherence Agreement with General Tobacco any other term or terms included in the Reference Agreement; and

c. If such NPM, at the time of execution of its agreement, has no unsatisfied obligations to make escrow deposits pursuant to the NPM Escrow Statutes, and all such sums in the NPM's escrow accounts are paid to the Settling States pursuant to the Reference Agreement, the relative percentage of such escrow account to the NPM's Prior Obligations as compared to the relative percentage of General Tobacco's escrow account to its Prior Obligations shall not trigger the MFN rights accorded by this section.

18. **2000, 2001, 2002 NPM Adjustment Release.** General Tobacco absolutely and unconditionally releases and forever discharges each Settling State from any and all claims that it ever had, now has, or hereafter can, shall or may have related to any potential NPM Adjustment to payments due under the MSA for sales in the years 2000, 2001, and 2002.

19. **Contract Manufacturing.**

a. General Tobacco represents that either it has not contract manufactured Cigarettes (i.e., manufactured and sold Cigarettes as to which it does not own or control the trademark rights to the brand thereof) for sale in domestic markets in any State or that any contract manufactured Cigarettes it made for sale in domestic markets in any State have been reported to the MSA Independent Auditor.

b. If in the future General Tobacco contract manufactures Cigarettes (i.e., manufactures and sells Cigarettes as to which it does not own or control the trademark rights to the brand thereof) for sale in domestic markets in any State for any person or entity that is not a Participating Manufacturer, it will include such Cigarettes as its Cigarettes under the MSA, including making applicable payments, and the parties agree that such Cigarettes shall be included in General Tobacco's Market Share and Relative Market Share under the MSA.

c. If General Tobacco contract manufactures Cigarettes for another Participating Manufacturer, General Tobacco shall treat such Cigarettes as its Cigarettes under

the MSA by including them in its Market Share and making any applicable payments, unless such other Participating Manufacturer treats such Cigarettes as its Cigarettes under the MSA by including them in its Market Share and making any applicable payments.

d. If all Cigarettes pursuant to subsections b and c above are included in the Market Share of a Participating Manufacturer and all applicable payments are made thereon, General Tobacco shall be deemed to be in compliance with the payment obligations of the MSA with respect to such Cigarettes.

20. **Exporting Cigarettes.** General Tobacco agrees that it will not export any Cigarettes unless such cigarettes permanently imprinted with a clear and conspicuous notice, on the outside of both the Cigarette cartons and packs, that such Cigarettes are not intended for sale in the United States, including the Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, American Samoa and Guam.

21. **Default and Acceleration.** Should General Tobacco fail to make any payment required by this Agreement, on time and in full, or should General Tobacco become the subject of any insolvency proceeding, including but not limited to General Tobacco seeking (voluntarily or involuntarily) federal bankruptcy protection, the entire unpaid balance of the General Tobacco Prior Obligations shall become immediately due and payable.

22. **Restrictions on Transfers; Miscellaneous.** General Tobacco, Sun and Trademark Holdings each agree to be bound by all provisions of Section XVIII (c) of the MSA as if they were Participating Manufacturers.

23. **Treatment of any NPM Adjustment for sales in 2003 or 2004.** In the event that General Tobacco does not elect to receive the credit for sales in Previously Settled States in paragraph 13, above, any NPM Adjustment to the payments owed to the States under the MSA for sales in the years 2003 and 2004 shall not serve to reduce General Tobacco's Current Obligations, or be used as a setoff against any annual payment made under Paragraph 8, above. Instead, any such NPM Adjustment shall be used to reduce the principal of the General Tobacco Prior Obligations so that the amount of principal due for each of the remaining annual payments

made under Paragraph 8, above, is reduced by the corresponding percentage in Paragraph 8, above.

24. **Enforcement.** Any of the undersigned Settling States may enforce this Agreement in its respective Court (as defined in Section II(p) of the MSA. The prevailing party shall be entitled to its costs and expenses (including its attorney's fees) in addition to all other remedies to which it may be entitled.

By: 

Vidal Suriel, President/Owner  
Vibo Corporation d/b/a General Tobacco

Date: 08/19/04

By: 

Vidal Suriel, President/Owner  
Trademark Holdings Corporation

Date: 08/19/04

By: 

Vidal Suriel, President/Owner  
Sun Tobacco, Inc.

Date: 08/19/04

*(Signatures of Settling States to follow)*